IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.9.2007

CORAM:-

The Hon'ble Mr Justice S. PALANIVELU

Criminal Appeal No. 841 of 2007

M/s. Shalimar Paints Ltd.,
No. 48 Second Line beach,
Chennai.1.
Rep. by its authorised representative
Mr. K. Rangarajan .. Petitioner

Vs.

M/s. Muralidharan Hardware Mart,
No. 218, Choolaimedu High Road,
Chennai.94
rep. by its Proprietor,
Mr. Muralidharan .. Respondent

Appeal filed under Section 378 Cr.P.C. against the order of dismissal for default dated 21.6.2006 passed in C.C.No. 7530 of 1998 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and restore the same.

For appellant : Mr. M. Aravind Subramanian

JUDGMENT

The appellant is the complainant before the learned VII Metropolitan Magistrate Court, George town, Chennai in C.C.No. 7530 of 1998. He had lodged a private complaint on the strength of a dishonoured cheque against the respondent under Section 138 of Negotiable Instruments Act.

2. The learned Metropolitan Magistrate dismissed the complaint, acquitting the accused under Section 256(1) Cr.P.C. for the non appearance of the complainant. It is also stated in the order that on the previous hearings also, the complainant had not appeared before the Court and since the matter had been pending from 1998, the same has been dismissed. Hence, the appellant is before this Court.

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3. Learned counsel for the appellant strenuously contended that merely because of the non appearance of the complainant before the Court concerned at the time of hearing, the presiding Officer/ Magistrate could not pass an order acquitting the accused after dismissal of the complaint. According to the learned counsel for the appellant, the learned Magistrate should have adopted a proper procedure in this matter and the non observance of such procedure would tantamount to not rendering proper justice to the parties.

4. In support of his contention, he relied on the decision reported R. SEKAR – Vs- S. Rajendran (2004(1) C.T.C. 689). In the said decision, this Court has followed the principles formulated by the Apex Court in ASSOCIATED CEMENT CO. LTD. - V- KESHJVANAND (1998 Crl.L.R. 856) wherein, the Apex Court has held as follows:-

> " Two constraints are imposed on the Court for exercising the power under Section 256. First is, if the Court thinks that in a situation it is proper to adjourn the hearing, then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day, the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that date was quite unnecessary, then resorting to the step of axing down the complaint may not be proper exercise of power envisaged in the Section. The discretion must, therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice."

5. The above said decision would throw much light on the subject. The proper course to be adopted by the learned Metropolitan Magistrate is that when the complaint was taken up for hearing, if the complainant is not present before the Court, it is incumbent upon the Presiding Officer to issue notice to the complainant and without issuance of such notice, adopting the procedure of dismissing the complaint under Section 256(1) Cr.P.C. is not at all appreciable.

6. In view of the above said decisions, this Court is of the opinion that the learned Magistrate should have adjourned the case to some other date to enable the complainant to be present before the Court and in the meanwhile, necessary notice should have been sent to the complainant.

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In these circumstances, this Court finds that legal grounds are available for allowing this appeal.

7. Considering the circumstances of the case, this Court is of the view that there is no necessity to issue notice to the respondent since it is a matter between the Court and the appellant.

8. In fine, this appeal is allowed and the learned Metropolitan Magistrate is directed to follow the guidelines issued in the decisions cited supra.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ra

To
1. The VII Metropolitan Magistrate,
George Town, Chennai.

2. -do- through The Chief Metropolitan Magistrate, Egmore, Chennai.

+ 1 CC To Mr. M.Aravind Subramanian, Advocate SR NO.57441

Crl.A.No. 841 of 2007

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